

1306

No. 3796

1307

United States ¹³⁰⁷
 Circuit Court of Appeals
 For the Ninth Circuit.

CHIN TOO,

Appellant,

vs.

RICHARD L. HALSEY, as Immigration Inspec-
 tor in Charge at the Port of Honolulu,
 Appellee.


Transcript of Record.

Upon Appeal from the United States District Court
 for the Territory of Hawaii.

FILED

NOV 10 1921

**F. B. MONCKTON,
CLERK.**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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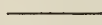
For Petitioner, Chin Too:

Messrs. WATSON CLEMONS & HITE, 416-
418 Kauikeolani Building, Honolulu, T. H.,

For Respondent, RICHARD L. HALSEY, Esq.,
U. S. Immigration Inspector in Charge at
the Port of Honolulu:

S. C. HUBER, Esq., United States District
Attorney.

N. D. GODBOLD, Esq., Assistant U. S. District
Attorney. [1*]



In the United States District Court for the Territory
of Hawaii.

In the Matter of the Application of CHIN TOO for
a Writ of Habeas Corpus.

Statement.

TIME OF COMMENCING SUIT:

February 25th, 1921: Verified petition for writ of
habeas corpus filed. Order to show cause issued.

NAMES OF ORIGINAL PARTIES:

Petitioner: Chin Too.

Respondent Richard L. Halsey, Esq., U. S. Inspector
of Immigration in charge at the port of Hono-
lulu.

DATES OF FILING OF THE PLEADINGS:

February 25th, 1921: Petition.

February 28th, 1921: Return of Richard L. Halsey,
to order to show cause.

*Page number appearing at foot of page of original certified Trans-
script of Record.

SERVICE OF PROCESS:

February 25th, 1921: Acceptance of service by U. S.

Attorney of petition and order to show cause.

March 10th, 1921: Acceptance of service by U. S.

Attorney of writ of habeas corpus.

PROCEEDINGS:

February 28th, 1921: Hearing on return to order to show cause, taken under advisement.

March 24th, 1921: Hearing on return to writ of habeas corpus, taken under advisement.

April 9th, 1921: Decision, exception, notice of appeal and order fixing bond.

The above hearings were had before the Honorable HORACE W. VAUGHAN, Judge of the above-entitled court. [2]

DECISION.

April 9th, 1921: Decision filed, HORACE W. VAUGHAN, Judge.

April 13th, 1921: Judgment filed and entered, HORACE W. VAUGHAN, Judge.

April 20th, 1921: Petition for appeal.

United States of America,
District of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the United States District Court in and for the District and Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit; the names of the original parties thereto; the several dates when the respective pleadings were filed; and account of the proceedings showing the acceptance of service of the

order to show cause and writ of habeas corpus and the time when the judgment herein was rendered and the Judge rendering the same, in the matter of the Application of Chin Too for a Writ of Habeas Corpus, No. 165, in the United States District Court in and for the District and Territory of Hawaii.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 4th day of October, A. D. 1921.

[Seal] WM. L. ROSA,
Clerk, United States District Court, in and for the
District and Territory of Hawaii. [3]

In the United States District Court for the Territory
of Hawaii.

In the Matter of the Application of CHIN TOO for
a Writ of Habeas Corpus.

**Order Extending Time to June 18, 1921, to Trans-
mit Record on Appeal.**

Now, on this 20th day of May, A. D. 1921, it appearing from representations of the clerk of this court that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of error in this cause,

together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to June 18, 1921.

HORACE W. VAUGHAN,

Judge, U. S. District Court, Hawaii.

Filed May 20, 1921. Wm. L. Rosa, Clerk. By

_____, Deputy Clerk. [4]

In the United States District Court for the Territory
of Hawaii.

In the Matter of the Application of CHIN TOO for
a Writ of Habeas Corpus.

**Order Extending Time to July 18, 1921, to Trans-
mit Record on Appeal.**

Now, on this 18th day of June, A. D. 1921, it appearing from representations of the clerk of this court that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of

Appeals, be, and the same is hereby extended to July 18, 1921.

HORACE W. VAUGHAN,

Judge, U. S. District Court, Hawaii.

Filed June 18, 1921. Wm. L. Rosa, Clerk. By

_____, Deputy Clerk. [5]

In the United States District Court for the Territory
of Hawaii.

In the Matter of the Application of CHIN TOO for
a Writ of Habeas Corpus.

**Order Extending Time to August 17, 1921, to Trans-
mit Record on Appeal.**

Now, on this 18th day of July, A. D. 1921, it appearing from representations of the clerk of this court that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to August 17, 1921.

HORACE W. VAUGHAN,

Judge, U. S. District Court, Hawaii.

Filed July 18, 1921. Wm. L. Rosa, Clerk. By
_____, Deputy Clerk. [6]

In the United States District Court for the Territory
of Hawaii.

In the Matter of the Application of CHIN TOO for
a Writ of Habeas Corpus.

**Order Extending Time to September 17, 1921, to
Transmit Record on Appeal.**

Now, on this 18th day of August, A. D. 1921, it
appearing from representations of the clerk of this
court that it is impracticable for said clerk to pre-
pare and transmit to the clerk of the Ninth Circuit
Court of Appeals, at San Francisco, California, the
transcript of the record on assignment of error in the
above-entitled cause, within the time limited there-
for by the citation heretofore issued in this cause,
it is ordered that the time within which the clerk of
this court shall prepare and transmit said transcript
of the record on assignment of error in this cause,
together with the said assignment of errors and all
papers required by the praecipe of plaintiff in error
herein, to the clerk of the Ninth Circuit Court of
Appeals, be, and the same is hereby extended to
September 17, 1921.

HORACE W. VAUGHAN,
Judge, U. S. District Court, Hawaii.

Filed Aug. 18, 1921. Wm. L. Rosa, Clerk. By
_____, Deputy Clerk. [7]

In the United States District Court for the Territory
of Hawaii.

In the Matter of the Application of CHIN TOO for
a Writ of Habeas Corpus.

**Order Extending Time to October 17, 1921, to
Transmit Record on Appeal.**

Now, on this 17th day of September, A. D. 1921, it appearing from representations of the clerk of this court that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to October 17, 1921.

HORACE W. VAUGHAN,
Judge, U. S. District Court, Hawaii.

Filed Sept. 17, 1921. Wm. L. Rosa, Clerk. By
———, Deputy Clerk. [8]

In the United States District Court of the Territory of Hawaii. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Petition for Writ of Habeas Corpus. Filed Feb. 26, 1921. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. Watson & Clemons, Attorneys for Petitioner, 417 Kauikeolani Building, Honolulu, T. H.

Service of copy accepted Feb. 26th, 1921.

RICHARD L. HALSEY,

Respondent.

By (Sgd.) S. C. HUBER,

U. S. Atty.,

His Atty. [9]

In the United States District Court of the Territory of Hawaii.

In the Matter of the Application of CHIN TOO for a Writ of Habeas Corpus.

Petition for Writ of Habeas Corpus.

To the Honorable HORACE W. VAUGHAN, Judge of said Court:

The petition of Chin Too respectfully shows:

1. That he is a resident of Honolulu, in the City and County of Honolulu, Territory of Hawaii, and has resided in the Hawaiian Islands about twenty-eight or more years.

2. That he is the holder and entitled to the benefits of Laborer's Return Permit No. 4380/1371, issued to him under the laws and regulations of the United

States of America, relating to the immigration of Chinese, said permit showing that he departed for China by the steamship "Shinyo Maru" on May 13th, 1920.

3. That having departed for China as aforesaid from the port of Honolulu, in said Territory, he returned to said port by said steamship on December 13th, 1920, and was then fully entitled to land in and be admitted to said United States, and was under no legal disability or disqualification to prevent his so landing.

4. But that now and ever since said last date, he is and has been imprisoned and unlawfully restrained of his liberty by Richard L. Halsey, Inspector in Charge of the United States Immigration Station at said port of Honolulu.

5. That the true cause or pretense of the imprisonment or restraint aforesaid is a certain order of a Board of Special Inquiry [10] of said Immigration Station made, to wit, December 17th, 1920, denying the petitioner admission into the United States on the ground of being a polygamist and a person who practices polygamy as set forth in section 3 of the Immigration Act of February 5th, 1917, and a certain order of the Secretary of Labor of the United States of America thereafter made affirming said order of said Board.

6. That said order of said Board and of said Secretary of Labor was based upon a so-called hearing before said Board, but that said hearing was unfair, and was a mere semblance of a hearing.

7. That hereto annexed and made a part hereof is

a true and complete copy of the record and proceedings in said matter and hearing before said board.

8. That said order is contained and shown in the following proceedings, which are set out at length at page 4 of said Exhibit to wit:

“JACKSON L. MILLIGAN.—The testimony of this applicant, under oath, clearly shows that while he had a lawful wife living in China he married another woman here according to the laws of this Territory and the United States.

I, therefore move that he be denied admission to the United States as a polygamist and as a person who practices polygamy, as set forth in Section 3 of the Immigration Act of February 5th, 1917, and that he be ordered returned to the country from whence he came, i. e., China.

So far as his qualifications under the Chinese Exclusion Act are concerned he would be admissible.

HAZEL G. MASER.—I second the motion.

HARRY B. BROWN (Chairman).—I concur in the above motion and would state that this applicant seems to have followed the course of quite a large number of other Chinese in this Territory who are unable to bring their wives from China, and, knowing that they will probably live here the greater part of their lives, have married here. Undoubtedly some of these men have gone to China and returned but were not honest enough to admit their plural marriage and thereby secured admission. We know from the decision in the case of Lee Sau, a Chinese Laborer, Bureau file No. 54898/106 of November 2nd, 1920, which only recently reached this office that

a Chinese having a lawful wife and a secondary wife in China is admissible but the case of this applicant is somewhat different as he was legally married to a woman in China under the laws and customs of that country and while that woman was still living he contracted another marriage in accordance with the law of this Territory. [11]

As this alien is denied under the Immigration Law the ten days' notice within which to produce further evidence under the Chinese Exclusion Law is not applicable.

CHAIRMAN (to Applicant).—12/17/1920, A. M. (Through Interpreter Hee Kong.) You are informed that you have been denied admission to the United States as a polygamist and as a person who practices polygamy as set forth in Section 3 of the Immigration Act of February 5th, 1917, and are hereby ordered returned to the country from whence you came, i. e., China.”

9. That this petitioner claims that said proceedings were and are erroneous in law, in that the record shows, in said exhibit at pages 1 and 2, that the alleged lawful wife in China had died in the second month of the year 1920, so that at the time of his arrival on return to Hawaii in December, 1920, he was no longer, if ever, a polygamist, or practicing polygamy; and that, therefore, as a matter of law, said order of the Board of Special Inquiry and its affirmance on appeal by the Secretary of Labor, were and are unjustified and invalid.

10. And further this petitioner claims that on his appeal aforesaid to the Secretary of Labor the deci-

sion and ruling of the Secretary was and is erroneous on the face of the record, in this that it is based on the assumed fact that the petitioner has now in China a wife to whom he is legally married, which assumption is contrary to the finding of the said Board which is affirmed by the Secretary, the finding of the Board having been based upon the motion of Inspector Milligan, appearing at page 4 of said record in exhibit, which predicates the alleged polygamy upon the marriage to the first wife, to wit, Fong She, but who is now dead. The pertinent part of the Secretary's ruling is as follows:

“This Chinese person has been excluded at Honolulu as a polygamist. The record shows that he has in China a wife to whom he is legally married according to the customs of the country, and also that he has a wife in Honolulu to whom he [12] is married according to the laws of the United States. His exclusion therefore clearly was justified.”

And this petitioner claims that this ruling of the Secretary is, accordingly, erroneous and invalid, and cannot in law be the basis of his exclusion from this country.

WHEREFORE, the petitioner prays that a writ of habeas corpus be issued out of this Honorable Court commanding the said Richard L. Halsey to have and produce the body of the petitioner before this Court at time and place as it may direct, and that as soon as allowable by law the petitioner may be enlarged upon bond in such amount as may be deemed reasonable by your Honor.

Honolulu, February 25th, 1921.

(Sgd.) CHIN TOO,
Petitioner.

WATSON & CLEMONS,
417 Kauikeolani Building,
Honolulu, T. H.,
Attorneys for Petitioner.

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Chin Too, being first duly sworn on oath, deposes and says, that he is the petitioner herein, and that he has heard read the foregoing petition and that the same is true.

(Sgd.) CHIN TOO.

Subscribed and sworn to before me this 25th day of February, A. D. 1921.

(Sgd.) H. P. O'SULLIVAN,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

At Chambers, Honolulu, March 10th, 1921.

Let the writ of habeas corpus issue as prayed for returnable March 11th, 1921, at 2 P. M.

(Sgd.) HORACE W. VAUGHAN,
Judge. [13]

Exhibit "A."

UNITED STATES IMMIGRATION SERVICE.
 PORT OF HONOLULU,
 T. H.

File 4380/1371.

Record of the Board of Special Inquiry—Convened
 December 15th, 1920.

Members of Board: HARRY B. BROWN, Chair-
 man,
 JACKSON L. MILLIGAN and
 HAZEL G. MASER.

HEE SAU HOY, Interpreter.

HAZEL G. MASER, Stenographer.

Case of—CHIN TOO, Returning Laborer, S/S
 "Shinyo Maru" December 13th, 1920.

NOTE: Applicant presents laborer's return per-
 mit No. 4380/1371 showing that he departed for
 China per S/S "Shinyo Maru" on May 13th, 1920.

Applicant sworn, testifies:

Q. What is your name and age?

A. Shin Too, *alias* Chin Young Chew, 47.

Q. Where were you born?

A. Poon Tong village, Sun Ning District, China.

Q. When did you first come to Hawaii?

A. About 28 or 29 years ago.

Q. How old were you when you first came to
 Hawaii? A. 17.

Q. How many trips have you made back to China?

A. Four.

Q. When you first came to Hawaii how long did

you stay here before making your first trip to China? A. 5 years.

Q. What is your occupation? A. Laundryman.

Q. Do you desire a friend or relative present during the hearing of your case? A. No.

Q. How many times have you been married?

A. I was first married to Fong She (Kwong She).

Q. When were you married to her?

A. When I was 22—in China.

Q. Where is she now?

A. Dead she died at Poon Kong village.

Q. When did she die?

A. Second month of this year.

Q. How many children did she have?

A. One son and two daughters.

Q. What are their names and ages?

A. Son is Chin Cheong, 17, and daughters are Chin Han Nui, 22 or 23, and Chin Sim Nui, 11, the oldest one is married in China.

Q. Where are they all living? A. In China.

Q. Did you have any other wives?

A. Yes Chang She.

Q. When did you marry her?

A. I did not marry her.

Q. Did she live with you in China?

A. Yes for two months and then ran away.

Q. You made a statement in this office yesterday and then you did not say anything about her running away from you?

A. I was not asked anything about that.

Q. Did you take that woman Chang She as your

lawful wife or as a concubine while you were in China?

A. She only came to my house to live with my mother and take care of my children.

Q. Did you take her as a legal wife or as a concubine? A. No.

Q. Why did you say yesterday that you married her and that her name was Chang She?

A. I did not marry her—she only took care of my children and mother.

Q. Yesterday you said you married Chang She in June of this year—now why did you say you were married if you were not?

A. Yes, we were married and she was not satisfied so ran away from me.

Q. Who have you taking care of your mother and children in China now then?

A. My mother takes care of the place herself.

Q. You just told us that you had gotten this other woman to take care of the place—now who has taken this woman's place?

A. My mother is still young enough to take care of the place herself.

Q. Now, you told us just a few minutes ago that you took this woman Chang She to your house to take care of your mother and children and now you say your mother does not need anyone to take care of her?

A. That woman may come back to my house, I do not know. [14]

Applicant sworn, testifies (continued):

Q. Have you any other wives?

A. Yes; I have a wife in Hawaii.

Q. What is her name?

A. Marie Donya—she is Spanish, I think—dark like a Hawaiian.

Q. When were you married to her?

A. About 7 years ago.

Q. Where? A. Honolulu.

Q. Have you any children by her?

A. Two sons and one daughter.

Q. What are their names and ages?

A. Sons are Chin Mo Sun, 13, and Chin Min Kwock, 6, both of them were born in Hawaii and are now in China—I took them back there with me; the girl is Chin Min Koon, 3, born in Hawaii and now here.

Q. Were the children by your wife in Hawaii all born here? A. Yes.

Q. Who performed the marriage ceremony of this woman Marie Donya and yourself?

A. A minister who had a hardware store on King Street near Smith Street (probably refers to Abraham Fernandez),

Q. Was it Mr. Fernandez? A. I do not know.

Q. Did you get a license to marry? A. Yes.

Q. How long did you live with this Marie before you married her? A. Nearly a year.

Q. Who does the child Chin Mo Sun belong to?

A. That child is by her first husband and I have adopted him.

Q. Did you adopt him according to law in the courts? A. Yes—I have a paper from the courts.

Q. Were you living with Marie up until you left

for China on this trip? A. Yes.

Q. Did any of the officers in this Territory get after you for living with this woman Marie and cause you to marry her or did you do it of your own free will? A. It was of my own free will.

Q. Were you summoned before the police for living with this woman? A. No.

Q. Were you in China when your first wife Fong She died? A. I was here.

Q. When did you make your trip to China before this trip? A. When I was 35 years old.

Q. How old are you now? A. 47.

Q. When was this second trip to China?

A. When I was 28.

Q. How do you know your first wife Fong She died in China in the first part of this year?

A. My mother wrote me a letter about it.

Q. Did you send money all the time to support your family in China? A. Yes.

Q. How often? A. About four times a year.

Q. How often would you receive letters from your home in China? A. About 6 times a year.

Q. Would they be sent by your mother or your wife Fong She? A. From my mother.

Q. Would those letters explain to you the condition of the health of the family and how your wife and children were getting along? A. Yes.

Q. So you know positively then that your wife Fong She did not die until the 2d month of this year? A. Yes.

Q. What is the name of your mother?

A. Yee She, she is 60.

Q. Bound or natural feet? A. Bound.

Q. Did your wife Fong She have bound or natural feet? A. Natural.

Q. Was she the first wife you ever had.

A. Yes.

Q. And when she came to your house did you have the usual Chinese marriage ceremony performed? A. Yes.

Q. And during all those years was she known as your lawful wife and did you consider her as such?

A. Yes.

Q. Why did you never bring her to Hawaii?

A. I was always a laundryman and so could not bring her here under the law.

Case of Chin Too, returning laborer, ex S/S "Shinyo Maru," Dec. 13th, 1920, file 4380/1371. 12/15/1920. [15]

Applicant sworn, testifies (Continued):

Q. What were your reasons for marrying this woman in Hawaii when you had another wife living in China?

A. She gave me her son and asked be to take care of him and then later I married her.

Q. If you had been permitted to bring your wife from China would you have married this woman here?

A. If I could have brought my wife from China I would never have married here—I would have sent for my Chinese wife.

Q. Did you take any money, letters or anything else from the United States to anyone in China on this trip?

A. Took \$10.00 from Chun Fong Bung to his mother; took \$10.00 from Chim Yook to his wife.

Q. Did you see any resident or former resident of this country during your recent stay in China?

A. Saw Chun Goon, Chun Hong, Chin Min, that is all.

Q. Did you visit the home of any resident or former resident of this country?

A. Went to the house of the three persons mentioned above.

Q. Did you see the son of any resident or former resident of this country? A. No.

Q. Did you attend any weddings? A. No.

Q. Anything further to say? A. No.

Applicant signed Note-book (Tracing).

NOTE: Records of this office show the following:

That this applicant was issued Return Permit No. 20056 on July 4th, 1903, and went to China, returning the following year.

That he was again issued Return Permit No. 24095 on March 15th, 1909, and departed for China returning on October 21st, 1910.

Case of Chin Too, returning laborer, ex S/S "Shinyo Maru," Dec. 13th, 1920, file 4380/1371. 12/15/1920. [16]

December 17th, 1920.

Same board reconvened.

MOTION.

JACKSON L. MILLIGAN.—The testimony of this applicant, under oath, clearly shows that while

he had a lawful wife living in China he married another woman here according to the laws of this Territory and the United States.

I, therefore, move that he be denied admission to the United States as a polygamist and as a person who practices polygamy, as set forth in Section 3 of the Immigration Act of February 5th, 1917, and that he be ordered returned to the country from whence he came, i. e., China.

So far as his qualifications under the Chinese Exclusion Act are concerned he would be admissible.

HAZEL G. MASER.—I second the motion.

HARRY B. BROWN (Chairman).—I concur in the above motion and would state that this applicant seems to have followed the course of quite a large number of other Chinese in this Territory who are unable to bring their wives from China, and knowing that they will probably live here the greater part of their lives, have married here. Undoubtedly some of these men have gone to China and returned but were not honest enough to admit their plural marriage and thereby secured admission. We know from the decision in the case of Lee Sau, a Chinese Laborer, Bureau File No. 54898/106 of November 2d, 1920, which only recently reached this office that a Chinese having a lawful wife and a secondary wife in China is admissible but the case of this applicant is somewhat different as he was legally married to a woman in China under the laws and customs of that country and while that woman was still living he contracted another marriage in accordance with the law of this Territory.

As this alien is denied under the Immigration Law the ten days' notice within which to produce further evidence under the Chinese Exclusion Law is not applicable.

CHAIRMAN (to Applicant).—12/17/1920 A. M. (Through Interpreter Hee Kwong.) You are informed that you have been denied admission to the United States as a polygamist and as a person who practices polygamy as set forth in Section 3 of the Immigration Act of February 5th, 1917, and are hereby ordered returned to the country from whence you came, i. e., China.

From this decision you have the right to appeal your case to the Secretary of Labor, at Washington, D. C., either with or without the services of an attorney, and in case you desire to avail yourself of this right you must so notify the Inspector in Charge within forty-eight hours from the time of this notice.

In case you are finally returned to China all expenses incident to such return will be borne by the steamship company bringing you here, and you will be returned in the same class in which you came, i. e., steerage.

(Signed) HAZEL G. MASER,
Stenographer.

Certified correct.

Case of Chin Too, returning laborer, ex S/S "Shinyo Maru," Dec. 13th, 1920. File 4380/1471. 12/17/1920. [17]

U. S. IMMIGRATION SERVICE.

No. 4380/1371.

Port of Honolulu, Hawaii,

May 8, 1920.

Case of CHIN TOO, Chinese Laborer, Return Permit.

Inspector—EDWIN FARMER.

Interpreter—HEE KWONG.

Applicant sworn, testifies: CR. #11521.

Name and age: Chin Too, *alias* Chin Leang Chu, 45 yrs. Born at Poon Tong, China. In Hawaii, a little over 25 yrs. Been back to China three times; first time, when I was 22 yrs. old and returned to Hawaii the next year; second time, about six years after my return from the first trip, and returned to Hawaii the next year, third time, a little over six years after my return from my second trip, and returned 18 months later. Am married, wife, Donya, a Porto Rican, in Honolulu. Children: Two sons, Chin Ming Kwock, born in 1914, and Chin Ming Koon, born in 1916. I also have an adopted son, Chin Moo Sun, 12 or 13 years old, the son of my wife by her former husband, who is dead. No daughters. Occupation: Laundryman in Honolulu. I should state that I was married formerly to a Chinese woman, who is dead, and have a son and a daughter by her, Chin Chong, 15 or 16 yrs., and a girl, Chin Hang Nui, about 20, both born in China and now in China. Parents: Father dead; mother living in China. Property: Sole owner of two laundries. But I want to qualify on debts due. Chun Mon owes me \$512.50, and

Chun Bun owes me \$532.00, borrowed. Neither gave me a note. (Presents a book with name on it and many accounts in it. Account of Chun Mon: June 25, 1919, loaned him \$75.00; Sept. 10, 1919, \$185.00; Dec. 25, 1919, \$340.00; Feb. 4, 1920, \$87.50; Oct. 20, 1919, he paid back \$30.00 April 1, 1920, \$145.00 Account of Chun Bun: It is a long account. The balance figures out that he owes applicant \$532. These accounts are true and correct. None of that money has been paid back except as shown. Address in China: Kung Wo Tseong, Hong Kong. I can read. (Illiteracy test explained.) No more to say.

(Signed in Chinese characters.)

(CHIN TOO.)

Witness sworn, testifies: CI. #25422, red, HB.

Name and age: Chin Bin, *alias* Chin Wing Bin, 23 yrs. (Family record on file.) Come as witness for Chin Too, going to China. I owe him \$532.00 borrowed. Did not give note. (Presents book with name on it and one account in it. It agrees with applicant's book. That account is true and correct. None of that money has been paid back except as shown. Have known Chin Too many years. Saw him in China when he went back. No more to say.

(Signed in Chinese characters.)

(CHIN BIN.)

Witness, sworn testifies: CR. #27473, verified Feb. 6, 1912.

Name and age: Chun Moon, *alias* Chun Mun Gai, 51 yrs. (Family record on file.) Come as witness

for Chin Too, going to China. I owe him \$512.50, borrowed. Did not give note. (Presents book with name on it and one account in it. It agrees with applicant's book.) That account is true and correct. None of that money has been paid back except as shown. Have known Chin Too many years. No more to say.

(Signed in Chinese characters.)

(CHUN MOON.)

May 8, 1920.

FINDING.

It is recommended that the applicant be granted a return permit on debts due, as seems to be shown by the above evidence.

EDWIN FARMER,
Immigrant Inspector.

Approved:

RICHARD L. HALSEY.
Inspector in Charge. [18]

In the United States District Court of the Territory of Hawaii. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Order to Show Cause. [19]

In the United States District Court of the Territory of Hawaii.

In the Matter of the Application of CHIN TOO for a Writ of Habeas Corpus.

Order to Show Cause.

The United States of America to RICHARD L. HALSEY, Inspector in Charge of Immigration at the Port of Honolulu:

The petition for a writ of habeas corpus having been filed in the above-entitled court and this date presented to me, one of the Judges of said court, by one Chin Too, alleging that he is unlawfully restrained of his liberty and imprisoned by you, contrary to the Constitution and the laws of the United States of America, and a copy of which petition is ordered to be served upon you with this writ, you are hereby notified and required to be and appear before me in the courtroom of the United States, in the Model Block in Honolulu, City and County of Honolulu, Territory of Hawaii, on Monday, the 28th day of Feb., A. D. 1921, at 2 o'clock P. M. of said date, or at such other time as may suit the convenience of the court, to show cause, if any you have, why said writ of habeas corpus should not be issued as prayed for in said petition.

(Sgd.) HORACE W. VAUGHAN,
Judge.

[Seal]

Attest: A. E. HARRIS,
Clerk.

By (Sgd.) Wm. L. Rosa,
Deputy Clerk. [20]

In the United States District Court for the Territory of Hawaii. In the Matter of the Application

of Chin Too for a Writ of Habeas Corpus. Return of Richard L. Halsey to Order to Show Cause. Filed Feby. 28, '21. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. S. C. Huber, United States Attorney, N. D. Godbold, Assistant U. S. Attorney.

Due and legal service of within return hereby accepted and receipt of copy acknowledged at 2 P. M. Feb. 28, 1921.

WATSON & CLEMONS.

(Sgd.) C. F. C. [21]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of CHIN TOO for a Writ of Habeas Corpus.

Return of Richard L. Halsey to Order to Show Cause.

Comes now Richard L. Halsey, respondent herein, and in obedience to the orders of the Court heretofore made hereby certifies and returns as follows:

I.

That respondent is now and for many years last past has been Inspector in Charge of the United States Immigration Station at Honolulu, Hawaii.

II.

That he denies each and every allegation contained in applicant's petition for Writ of Habeas Corpus herein, except as hereinafter admitted.

III.

Respondent admits paragraphs 2, 7 and 8 of said petition.

IV.

That applicant Chin Too is an alien and a citizen of the Republic of China, and was such alien at all times referred to in said petition and hereinafter referred to in this return. [22]

V.

That on the 13th day of December, 1920, petitioner arrived at the Port of Honolulu, Territory of Hawaii, and sought to be admitted to the United States, and on the 15th day of December, 1920, appeared before a duly and regularly constituted Board of Special Inquiry of the Immigration Department of the United States, which said Board gave said applicant a full, fair and impartial hearing at which petitioner was granted every right accorded him by law, and as a result of said hearing said Board of Special Inquiry found that petitioner was not entitled to be admitted to the United States and made an order denying him the right of admission and making an order that he be returned to China the country from whence he came, all of which is fully set out in Exhibit "A" and made a part of paragraph 7 of applicant's petition and hereby by reference made a part of this return.

VI.

That from the decision of said Board of Special Inquiry petitioner took an appeal to the Secretary of Labor of the United States, and that said Secretary of Labor duly considered said case upon appeal and after fully, fairly and impartially considering the same found the findings of said Board of Special Inquiry to be correct, and sustained the findings and

order of said Board and dismissed applicant's appeal, a copy of the decision and order of the Secretary upon appeal being hereto attached marked Exhibit "1" and hereby made a part of this return.

VII.

That respondent is detaining petitioner at the United States Immigration Station at Honolulu, Hawaii, for return to China solely by reason of the findings and order of said Board [23] of Special Inquiry and of the Secretary of Labor.

WHEREFORE, respondent prays that applicant's petition be dismissed at his costs.

(Sgd.) RICHARD L. HALSEY.

United States of America,
Territory of Hawaii,—ss.

Richard L. Halsey, being first duly sworn according to law, deposes and says: that he is the Richard L. Halsey who has made the return to the order to show cause in the above-entitled cause; that he has read the said return, and knows the contents thereof and that the facts therein stated are true.

(Sgd.) RICHARD L. HALSEY.

Subscribed and sworn to before me this 28th day of February, A. D. 1921.

[Seal] (Sgd.) WM. L. ROSA,
Deputy Clerk, United States District Court, Territory of Hawaii. [24]

Exhibit No. 1.

No. 54994/48.

February 2, 1921.

In re CHIN TOO.

This Chinese person has been excluded at Honolulu as a polygamist. The record shows that he has in China a wife to whom he is legally married, according to the customs of that country, and also that he has a wife in Honolulu, to whom he has been married according to the laws of the United States. His exclusion clearly therefore was justified.

Inspector Brown, Chairman of the Board, in concurring in the motion of Inspector Milligan for exclusion, in a very few words distinguishes this case from that of Lee Sau, recently admitted by the Department, on appeal. It is the understanding of the Department that, under Chinese custom, it is possible for a man to have but one lawful wife; the other women who come into his household are concubines; the children of the latter are regarded as the children of the wife, and the wife is at all times the supreme head of the household, the concubines occupying practically the position of servants. To the Chinese there is not even immorality in this, although it is something that would not be countenanced for a minute, in the United States. Chinese men of this class do not seem to be covered by any provision of the immigration laws. They are not polygamists under the laws and customs of their own country, because they are married only once, and for the same reason, they

are hardly to be regarded as polygamists under our laws. Under Chinese customs Lee San had only one wife, while Chin Too, the applicant in this case, has two wives, one in China and one in Honolulu, and to both of them he is legally married. If he had never legally married the woman in Honolulu he would certainly not be a polygamist, at least he would not have committed an act of polygamy, and his status would then be almost, if not quite the same, as that of a Chinaman having a wife and a concubine in China with the exception that the fact of his living in this country with a woman not his wife would be regarded as reprehensible, and probably covered by statute, while in China his conduct would have been an every day affair, countenanced by the customs of the country.

The action of the board in excluding Chin Too was correct, and the appeal is therefore dismissed.

(Sgd.) LOUIS F. POST,
Assistant Secretary.

CEB. [25]

**(Proceedings—Return to Order to Show Cause,
Taken Under Advisement.)**

From the Minutes of the United States District
Court, Territory of Hawaii.

Monday, February 28th, 1921.

(Title of Court and Cause.)

On this day came Mr. Chas. F. Clemons, of the
firm of Watson & Clemons, counsel for the appli-

cant, and also came Mr. S. C. Huber, United States District Attorney, counsel for the repondent herein, and this cause was called for hearing on the return to the order to show cause. Thereupon, and after due hearing, this matter was taken under advisement by the Court. [26]

In the United States District Court of the Territory of Hawaii. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Writ of Habeas Corpus. Filed Mar. 10, 1921. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk.

Service accepted Mch. 10th, 1921.

RICHARD L. HALSEY,
Respondent.
By (Sgd.) S. C. HUBER,
U. S. Atty.,
His Atty. [27]

In the United States District Court of the Territory of Hawaii.

In the Matter of the Application of CHIN TOO for a Writ of Habeas Corpus.

Writ of Habeas Corpus.

The President of the United States of America, to R. L. HALSEY, Inspector in Charge of Immigration in and for the District and Territory of Hawaii:

We strictly command and enjoin you that you have and produce before the United States District Court, in and for the District and Territory of

Hawaii forthwith, the body of Chin Too, and that you do on the 11th day of March, A. D. 1921, at the hour of 2 o'clock P. M., in the courtroom of said court at Honolulu, disclose the cause of his imprisonment and detention and then and there receive, undergo and have what the said United States District Court shall consider right, and in accordance with the law of the land, concerning him, the said Chin Too, and to abide the judgment of the Court in this behalf.

And we do hereby further command the United States Marshal in and for the District and Territory of Hawaii to serve this writ of habeas corpus upon the said R. L. Halsey, and make due return hereof, together with this writ.

WITNESS the Honorable HORACE W. VAUGHAN, Judge of the United States District Court, in and for the District and Territory of Hawaii, this 10th day of March, A. D. 1921.

By the United States District Court:

[Seal]

A. E. HARRIS,
Clerk of the Above-entitled Court.

By (Sgd.) Wm. L. Rosa,
Deputy. [28]

**(Proceedings—Return to Writ of Habeas Corpus,
Taken Under Advisement.)**

From the Minutes of the United States District
Court, Territory of Hawaii.

Thursday, March 24th, 1921.

(Title of Court and Cause.)

On this day came Mr. Chas. F. Clemons, of the firm of Watson & Clemons, counsel for the applicant, and also came Mr. S. C. Huber, United States District Attorney, counsel for the respondent herein, and this cause was called for hearing on the return to the writ of habeas corpus. Thereupon and after due hearing, this matter was taken under advisement by the Court. [29]

In the United States District Court, in and for the Territory of Hawaii. No. 165. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Stipulation. Filed Mar. 17, 1921. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. S. H. Huber, United States Attorney. N. D. Godbold, Assistant United States Attorney. [30]

In the United States District Court, in and for the
Territory of Hawaii.

No. 165.

In the Matter of the Application of CHIN TOO
for a Writ of Habeas Corpus.

Stipulation Re Hearing.

IT IS HEREBY STIPULATED by and between the respective parties hereto that the return of respondent heretofore filed in this case to the order to show cause be and it hereby is made the return to the writ of habeas corpus issued herein and that the hearing upon said writ shall proceed on the issues thus joined.

March 15, 1921.

RICHARD L. HALSEY,
Respondent.

By (Sgd.) S. C. HUBER,
United States Attorney,
His Attorney.

CHIN TOO,
Petitioner.

By WATSON & CLEMONS,
(Sgd.) C. F. C., His Attorneys. [31]

(Proceedings—Decision, Exception, Notice of Appeal, Order Fixing Bond.)

From the Minutes of the United States District Court, Territory of Hawaii.

Saturday, April 9th, 1921.

(Title of Court and Cause.)

On this day came Chas. F. Clemons, Esq., of the firm of Watson & Clemons, counsel for the applicant, and also came N. D. Godbold, Esq., Assistant United States District Attorney, counsel

for the respondent herein, and this cause was called for decision. Thereupon the Court read its decision discharging the writ of habeas corpus heretofore issued herein, to which ruling Mr. Clemmons entered an exception and gave notice of appeal. Thereafter the Court fixed bond on appeal in the sum of One Thousand Dollars (\$1000.00). [32]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of CHIN TOO
for a Writ of Habeas Corpus.

Opinion.

WATSON & CLEMONS, Attorneys for Petitioner.
S. C. HUBER, United States Attorney, and N. D.

GODBOLD, Assistant United States Attorney,
for RICHARD L. HALSEY, Respondent.

HORACE W. VAUGHN, Judge.

Filed Apr. 9, 1921. Wm. L. Rosa, Clerk. [33]

SYLLABUS.

Aliens—Immigration.—Though a Chinese alien may have such status that he is not excluded by any of the Chinese exclusion laws, he may come within some of the excluding clauses of the immigration laws.

Aliens—Immigration—Polygamy—A Chinese who, while living in the United States, contracts a polygamous marriage, having a wife then living in China, and lives with his polygamous wife before his departure for a temporary visit

to China, seeking re-entry upon return from such temporary visit, is within the clause of the immigration law excluding those who believe in or practice polygamy.

Aliens — Immigration — Seeking Writ of Habeas Corpus to obtain release must show right to enter or re-enter. [34]

OPINION.

The applicant in this case was a resident of Honolulu, having resided in the Territory of Hawaii for many years preceding his departure for a temporary visit to China on May 13, 1920. Before his departure he obtained a laborer's return permit entitling him to return or rather to exemption from the provisions of the laws excluding Chinese laborers. Within the time allowed by law he returned to Honolulu and sought re-entry as a returning laborer by virtue of his return permit. He was denied permission to enter by the immigration officials and ordered deported to China upon the ground that "while he had a lawful wife living in China, he married another woman here according to the laws of this Territory and the United States," and was, therefore, "a polygamist and a person who practices polygamy." He appealed to the Secretary of Labor and his appeal was dismissed. He seeks the writ of habeas corpus upon the ground that the ruling of the Secretary of Labor was erroneous. It is unnecessary to state the ground more particularly.

It is not necessary to inquire whether the ruling

of the Secretary of Labor is an affirmance of the decision of the Board of Inquiry at Honolulu or merely a dismissal of petitioner's appeal, nor is it necessary to inquire whether there is consistency between the ruling of the Secretary and that of the Board. It is sufficient to say that the applicant in this case does not show himself entitled to enter, but on the contrary, his own testimony before the Board of Inquiry, a copy of which is attached to the petition, shows that he is not entitled to enter, and, therefore, applicant does not show that he has been unlawfully denied admission. [35]

The applicant's testimony before the Board of Inquiry showed that about seven years before, he married in Hawaii and lived with the woman he married and had two sons and one daughter by her before his departure for his temporary visit aforesaid, and it also showed that at the time he married in this Territory he had a wife then living in China who has since died, and it also showed that he married in China while away on his temporary visit. It can hardly be doubted that his own evidence proved him to be a polygamist and a practitioner of polygamy.

In *White vs. Chin Fong*, 253 U. S. 90, it was not claimed that the applicant came within any of the clauses of the immigration laws excluding aliens. It was claimed that because his "original entry was obtained by fraud" he was not entitled to the benefit of those clauses of the exclusion laws which except certain classes of Chinese from the operation of those laws and permit them to enter and to re-

turn under certain regulations. None of the excluding clauses of the immigration act were invoked in that case. The question here presented is quite different. It is whether a Chinese laborer, though not excluded by the laws which apply to Chinese only, is entitled to re-enter if it be shown that he practiced polygamy in this country before the temporary absence from which he is returning. If he were seeking original admission, even though he were not excluded by the laws applicable to Chinese only, he would be excluded by the polygamy clause of the immigration act. That clause excludes immigrants seeking to re-enter after having previously lived in this country as well as immigrants seeking admission for the first time. *Lapina vs. Williams*, 232 U. S. 78.

Chinese aliens seeking admission or re-entry as domiciled aliens after returning from temporary absence [36] are subject to the immigration laws regulating the admission and re-entry of all aliens as well as those laws which apply to Chinese only. It is ordered that the writ be discharged.

(Sgd.) HORACE W. VAUGHAN,

Judge U. S. District Court.

Territory of Hawaii.

Dated this 9th day of April, 1921, at Honolulu,
T. H. [37]

In the United States District Court, in and for the Territory of Hawaii. No. 165. In the Matter of the Application of Chin Too for a Writ of

Habeas Corpus. Judgment. Entered in Judgment Book, at folio #2433. Filed Apr. 13, 1921. (Sgd.) Wm. L. Rosa, Clerk. S. C. Huber, United States Attorney. N. D. Godbold, Assistant United States Attorney. [38]

In the United States District Court, in and for the
Territory of Hawaii.

In the Matter of the Application of CHIN TOO for
a Writ of Habeas Corpus.

Judgment.

Now, to wit, on this 9th day of April, A. D. 1921, the court being in session, Hon. Horace W. Vaughan, a Judge thereof, presiding, the above-entitled matter came on for final determination, the case theretofore having been submitted upon the issues joined by the petition for writ of habeas corpus, the return of respondent to the order to show cause, which said return, by stipulation filed, was made the return to the writ of habeas corpus.

The Court, having considered the evidence as shown by the record made a part of the pleadings, and heard the argument made by Watson & Clemons, attorneys for petitioner, and S. C. Huber, United States Attorney, attorney for respondent, and being duly advised in the premises, finds the issues to be with respondent and the allegations contained in his return to be true.

It is therefore hereby ORDERED, ADJUDGED and DECREED, that the writ of habeas corpus heretofore issued herein be, [39] and it is hereby dis-

missed, and that the petitioner Chin Too be, and hereby is, remanded to the custody of respondent, and that petitioner pay the costs of this action in the sum of \$———.

(Sgd.) HORACE W. VAUGHAN,
Judge. [40]

In the United States District Court for the Territory of Hawaii. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Petition for Appeal. Filed Apr. 20, 1921. (Sgd.) Wm. L. Rosa, Clerk. Watson & Clemons, Attorneys for Petitioner, 417 Kauikelani Building, Honolulu, T. H. [41]

In the United States District Court, in and for the Territory of Hawaii.

In the Matter of the Application of CHIN TOO for a Writ of Habeas Corpus.

Petition for Appeal.

To the Honorable HORACE W. VAUGHAN,
Judge of the Above-entitled Court:

The petitioner, Chin Too, by his attorneys, Watson & Clemons, conceiving himself aggrieved by the order and judgment made and entered on the 9th day of April, A. D. 1921, in the above-entitled matter, does hereby appeal from the said order and judgment to the Circuit Court of Appeals for the Ninth Circuit, and files herewith his assignment of errors intended to be urged upon appeal, and prays that his appeal may be allowed and that a transcript

of the record of all proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit of the United States.

Dated this 20th day of April, A. D. 1921.

WATSON & CLEMONS,
Attorneys for said Chin Too.

By (Sgd.) CHAS. F. CLEMONS,
Copy rec'd 4/20/1921.

(Sgd.) S. C. HUBER. [42]

In the United States District Court for the Territory of Hawaii. In the Matter of the Application of Chin Too for a writ of Habeas Corpus. Assignment of Errors. Filed Apr. 20, '21. (Sgd.) Wm. L. Rosa, Clerk. Watson & Clemons, Attorneys for Petitioner, 417 Kauikeolani Building, Honolulu, T. H. [43]

In the United States District Court, in and for the Territory of Hawaii.

In the Matter of the Application of CHIN TOO for a Writ of Habeas Corpus.

Assignment of Errors.

The petitioner-appellant says that in the record and proceedings in the above-entitled matter there is manifest error, and that the final record and judgment made and entered in said matter on the 9th day of April, 1921, is erroneous and against the just rights of said petitioner in this, to wit:

I.

That the Court erred in discharging the writ, because it appears by the petition and record herein that the petitioner was entitled to enter the United States.

II.

That the Court erred in holding that, under the evidence, the petitioner was a polygamist.

III.

That the Court erred in holding, under the presumptions of law and burden of proof favoring the petitioner, that he was a polygamist.

IV.

That the Court erred in holding that the respondent has overcome the presumptions of law and burden of proof imposed upon the respondent.

V.

That the Court erred in holding that the petitioner had [44] "married in China while away on his (recent) temporary visit."

VI.

That, there being no ground of excluding the petitioner under the Chinese Exclusion Act, the Court erred in holding, that, so far as any ground of exclusion under the Immigration Act is concerned, the petitioner was charged with any obligation under the law to "show that he has been unlawfully denied admission."

WHEREFORE, by the law of this land the writ of habeas corpus issued herein should have been made absolute and the petitioner have been dis-

charged from custody and permitted to land and remain in the United States of America.

Dated this 20th day of April, A. D. 1921.

WATSON & CLEMONS,
Attorneys for Petitioner, Chin Too.
By (Sgd.) CHAS. F. CLEMONS.

Received a copy of the above assignment of errors.

(Sgd.) S. C. HUBER,
U. S. Atty.,
Attorney for Respondent. [45]

In the United States District Court for the Territory of Hawaii. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Order Allowing Appeal. Filed Apr. 20, 1921. (Sgd.) Wm. L. Rosa, Clerk. [46]

In the United States District Court, in and for the Territory of Hawaii.

In the Matter of the Application of CHIN TOO for a Writ of Habeas Corpus.

Order Allowing Appeal.

Upon the application and motion of Watson & Clemons, attorneys for the above-named petitioner:

It is hereby ordered that the petition for appeal heretofore filed herein by Chin Too be and it is hereby granted; and that an appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, from the final order

and judgment heretofore, on April 9th, 1921, filed and entered herein, be and the same is hereby allowed, and that a transcript of the record of all proceedings and papers upon which such final order and judgment was made, duly certified and authenticated, be transmitted, under the hand and seal of the Clerk of this Court, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States at San Francisco, in the State of California.

Dated, this 20th day of April, 1921.

(Sgd.) HORACE W. VAUGHAN,
Judge of said Court. [47]

In the United States District Court for the Territory of Hawaii. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Bond on Appeal. Filed Apr. 11, 1921. (Sgd.) Wm. L. Rosa, Clerk. [48]

In the United States District Court, in and for the Territory of Hawaii.

In the Matter of the Application of CHIN TOO for a Writ of Habeas Corpus.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Chin Too, as principal, and Chu Gem and Chu Ming, as sureties, all of Honolulu, City and County of Honolulu, Territory of Hawaii, are held and firmly bound unto the United States of America

in the sum of Five Hundred Dollars (\$500.00), lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves and our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, a writ of habeas corpus has issued out of the above-entitled court, directed to Richard L. Halsey, Esquire, respondent, directing him to have and produce the body of the said above-named Chin Too before the said United States District Court in and for the District and Territory of Hawaii; and

WHEREAS, the question of the imprisonment and detention of the said Chin Too and his right to discharge under the said writ of habeas corpus has been submitted to the United States District Court in and for the District and Territory of Hawaii, and by that Court decided adversely to the petitioner; and

WHEREAS, the said Chin Too has appealed from said decision and judgment of the District Court of the United States in and for the District and Territory of Hawaii to the United States Circuit [49] Court of Appeals for the Ninth Judicial Circuit of the United States at San Francisco, in the State of California.

NOW, THEREFORE, if the said Chin Too, petitioner-appellant shall prosecute his appeal to effect and shall answer, and pay, all costs to which the respondent-appellee in said appeal shall be entitled, if said petitioner-appellant

fails to make good his said appeal, and if he shall pay all costs further to accrue or be chargeable against him on account of said appeal, and if he shall abide by and perform whatever judgment, decree or/and order may be rendered or made by said Circuit Court of Appeals or on the mandate of said Circuit Court of Appeals, then this obligation shall be void; otherwise the same shall remain in full force and effect.

IN WITNESS WHEREOF the said principal and sureties have *hereunto* set their hands and seals at Honolulu, City and County of Honolulu, this 11th day of April, A. D. 1921.

(Sgd.) CHIN TOO, (Seal)

Principal.

(Sgd.) CHU GEM, (Seal)

(Sgd.) CHU MING, (Seal)

Sureties. [50]

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Chu Gem and Chu Ming, being first duly sworn, on oath depose and say, each for himself and not one for the other, that they are property owners and residents of said Honolulu, and are each worth more than double the amount of the penalty of the foregoing bond or undertaking over and above their just debts and liabilities and property exempt from execution.

(Sgd.) CHU GEM.

(Sgd.) CHU MING.

Subscribed and sworn to before me this 11th day of April, 1921.

(Sgd.) WM. L. ROSA,
Clerk, United States District Court in and for the
District and Territory of Hawaii.

Approved as to form, amount and sufficiency of sureties.

(Sgd.) HORACE W. VAUGHAN,
Judge, United States District Court, District of
Hawaii. [51]

In the United States District Court for the Territory of Hawaii. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Notice of Filing of Bond on Appeal. Filed Apr. 20, '21. (Sgd.) Wm. L. Rosa, Clerk. Watson & Clemons, Attorneys for Petitioner, 417 Kauikeolani Building, Honolulu, T. H. [52]

In the United States District Court, in and for the Territory of Hawaii.

In the Matter of the Application of CHIN TOO for a Writ of Habeas Corpus.

Notice of Filing of Bond on Appeal.

To RICHARD L. HALSEY, Esq., Immigration Inspector in Charge at the Port of Honolulu, Respondent, and His Attorney, S. C. HUBER, Esq., United States District Attorney:

You are hereby notified that in the matter of the appeal noted herein by said Chin Too from the final judgment and decree, the appellant, the petitioner

above named, has filed in the United States District Court for the Territory of Hawaii, a bond in the sum of five hundred dollars (\$500), in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit and the names and residences of the sureties who have executed said bond on appeal in this suit, a copy of which is attached hereto, and made a part hereof, are as follows:

Chu Gem, who resides at 1703 Young Street, in Honolulu, Island of Oahu, said Territory, and does business at 99 N. King Street, said Honolulu (manager of Quong Sam Kee Co.), and whose postoffice address is P. O. Box 985, Honolulu, Hawaii.

Chu Ming, who resides at 1703 Young Street, in Honolulu, Island of Oahu, said Territory, and does business at 99 N. King Street, said Honolulu (Quong Sam Kee Co.), and whose postoffice address is P. O. Box 985, Honolulu, Hawaii.

Honolulu, Hawaii, this 20th day of April, A. D. 1921.

CHIN TOO,

Petitioner-Appellant.

By WATSON & CLEMONS,

His Attorneys.

By (Sgd.) CHAS. F. CLEMONS,

Copy rec'd.

(Sgd.) S. C. HUBER,

U. S. Atty.,

Atty. for Respondent. [53]

In the United States District Court for the Territory of Hawaii. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Citation on Appeal. [54]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of CHIN TOO for a Writ of Habeas Corpus.

Citation on Appeal.

United States of America,—ss.

The President of the United States to RICHARD L. HALSEY, Immigration Inspector in Charge at the Port of Honolulu, Respondent, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal, filed in the clerk's office of the United States District Court for the Territory of Hawaii, wherein Chin Too is appellant, and you, Richard L. Halsey, are appellee, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court

of the United States of America, this 20th day of April, 1921, and of the Independence of the United States the one hundred and forty-fifth.

J. B. POINDEXTER,
Judge, U. S. District Court.

[Seal]

Attest: WM. L. ROSA,
Clerk, U. S. District Court.

Received a copy of the within citation April 20th, 1921.

RICHARD L. HALSEY,
Inspector as Aforesaid,
By S. C. HUBER,
His Attorneys. [55]

In the United States District Court for the Territory of Hawaii. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Stipulation. Filed Jun. 20, 1921. (Sgd.) Wm. L. Rosa, Clerk. [56]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of CHIN TOO
For a Writ of Habeas Corpus.

Stipulation Re Amendment to Petition.

It is hereby stipulated and agreed that the following amendment to the petition asked for and allowed in open court at the hearing herein shall be regarded as inserted in the proper place in said petition, to wit:

II. And the petitioner further alleges that so far as concerns any claim of polygamy based on an alleged or purported marriage to Chang She in China in 1920 (see record hereto annexed, page 1), the second marriage, to Maria Donya in Hawaii thereafter (seven years ago, see said record, page 2), was invalid, null and void, because of the existing prior marriage to Fong She in China, so that at the time of any alleged marriage aforesaid in China in 1920, this petition in any event had a legal right and no legal disability to marry said Chang She; but the petitioner denies said alleged marriage in China in 1920.

CHIN TOO,
By WATSON & CLEMONS,
His Attorneys.
By (Sgd.) C. F. CLEMONS,
(Sgd. S. C. HUBER,
United States Attorney,
Attorney for Respondent.

Approved.

(Sgd.) J. B. POINDEXTER,
Judge. [57]

In the United States District Court for the Territory of Hawaii. In the Matter of the Application of Chin Too for a Writ of Habeas Corpus. Praecipe for Transcript of Record. Filed June 15, '21. (Sgd.) Wm. L. Rosa, Clerk. [58]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of Chin Too for a Writ of Habeas Corpus.

Praeceptum for Transcript of Record.

To the Clerk of said Court:

You will please prepare transcript of the record in this case to be filed in the office of the Clerk of the Circuit Court of Appeals for the Ninth Circuit, and include therein the following, on file, to wit:

1. Petition for writ of habeas corpus including record of board or special inquiry annexed thereto.
2. Order to show cause thereon.
3. Return of R. L. Halsey, Inspector in Charge, to order to show cause.
4. Writ of habeas corpus.
5. Stipulation that return to order to show cause shall be regarded as return to writ.
6. Opinion.
7. Judgment.
8. Petition for appeal.
9. Assignment of errors.
10. Order allowing appeal.
11. Bond on appeal.
12. Notice of filing bond on appeal.
13. Citation on appeal.
14. Stipulation amending petition.
15. Orders extending time to transmit record on appeal.

16. Minutes of clerk in said case.

17. This praecipe.

Said transcript to be prepared as required by law and [59] the orders of this Court and said Court of Appeals and filed in the office of said Appellate Court at San Francisco.

CHIN TOO,
Petitioner-Appellant.
By WATSON & CLEMONS,
His Attorneys,
By C. F. CLEMONS. [60]

In the District Court of the United States, in and
for the District and Territory of Hawaii.

No. 165.

In the Matter of the Application of CHIN TOO
For a Writ of Habeas Corpus.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

United States of America,
District of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the District Court of the United States in and for the District and Territory of Hawaii, do hereby certify that the foregoing pages, numbered from 1 to 60, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the matter of the petition of Chin Too for a writ of habeas corpus, as the same remains of record and on file in my

office, and I further certify that I hereto annex the original citation on appeal and 5 orders extending time to transmit record on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is \$19.05 and that said amount has been paid to me.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 4th day of October, A. D. 1921.

[Seal] WM. L. ROSA,
Clerk United States District Court, in and for the
District and Territory of Hawaii. (61]

[Endorsed]: No. 3796. United States Circuit Court of Appeals for the Ninth Circuit. Chin Too, Appellant, vs. Richard L. Halsey, as Immigration Inspector in Charge at the Port of Honolulu, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Received October 12, 1921.

F. D. MONCKTON,
Clerk,
By Paul P. O'Brien,
Deputy Clerk.

Filed November 2, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

